

12 JAN 1959

Mr. Phillip S. Hughes
Assistant Director for
Legislative Reference
Bureau of the Budget
Washington 25, D. C.

Dear Mr. Hughes:

Thank you for your memorandum of 30 December 1958 requesting our views on the State Department's proposed amendments to the Mutual Defense Assistance Control Act of 1951 (Battle Act). The sectional analysis was most useful in our review of the draft bill.

The proposed amendments would appear to provide for more effective as well as more flexible administration of the Act. We have no specific comments and therefore have no objection to the amendments contained in the State Department's draft bill.

We appreciate your referral of this proposed legislation and request that we be apprised of any substantive changes which the Bureau may consider in this draft bill.

Sincerely,

SIGNED

John S. Warner
Legislative Counsel

Distribution:

O & 1 - Addressee

1 - DD/S

1 - Comptroller

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✓ 1 - LegCounsel (Subj.) w/background

1 - LegCounsel (Chrono)

OGC/LC/GLC/cmj (12 Jan 59)

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| 1 | AD/RR - 1113 M Bldg. | <i>DEG</i> | 6 Jan |
| 2 | <i>DD/I</i> | <i>RAH</i> | 6 Jan |
| 3 | <i>Legislative Counsel</i> | | |
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Remarks:

The Bureau of the Budget has forwarded the attached draft bill "Proposed amendments to Battle Act" for our views as soon as possible. In view of the Bureau of the Budget's request, we would appreciate your response by early next week.

STAT


John S. Warner
R

1 to 3 - Comments attached

FOLD HERE TO RETURN TO SENDER

| FROM: NAME, ADDRESS AND PHONE NO. | DATE |
|---------------------------------------|-----------------|
| Legislative Counsel - 221 East | 12/30/58 |

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6 - JAN 1959

MEMORANDUM FOR: Legislative Counsel

SUBJECT: Comment on Proposed Amendments to Battle Act

1. This is in response to your query of 30 December 1958 regarding our views on the subject amendments.
2. We feel that State's analysis, dated 10 December 1958 of the proposed amendments is valid in general.
3. The enclosed comments prepared by this Office may supplement in some respects State's analysis referred to above.

STAT


OTTO E. GUTHE/
Assistant Director
Research and Reports

Enclosure:
Subject Comments.

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EXECUTIVE OFFICE OF THE PRESIDENT

BUREAU OF THE BUDGET

WASHINGTON 25, D.C.

DEC 30 1958

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer
Atomic Energy Commission
✓ Central Intelligence Agency
Office of Civil and Defense Mobilization
Department of Agriculture
Export-Import Bank of Washington

SUBJECT: Draft bill "Proposed amendments to Battle Act."
(Submitted by the Department of State)

The Bureau of the Budget would appreciate receiving the views of your agency on this proposal before advising on its relationship to the program of the President.

() In order to permit expeditious coordination and clearance in accordance with Circular A-19, it is requested that your reply be made within thirty days.

() Special circumstances require that this be handled as a priority matter and that your views be received within two weeks.

(X) This is a matter of extreme urgency and your views are requested ~~by~~ as soon as possible.

Questions should be referred to Bartlett Harvey Bureau
of the Budget, Code ~~206~~, Extension 781.
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Phillip D. Hughes
Assistant Director for
Legislative Reference *mja*

Enclosures Copies, State draft bill
Copies, sectional analysis

COMMENT ON PROPOSED AMENDMENTS TO BATTLE ACT

1. The proposed amendments have the general effect of developing greater executive flexibility in the administration of the Act. The proposals represent a long-desired effort on the part of several executive departments to secure the flexibility necessary to support quick adjustment to international developments which offer the U.S. political targets of opportunity either among nominally communist nations or among neutrals. A proposed amendment defining nations as, "threatening the security of the United States," omits specific reference to the European Satellites as well as North Viet Nam.

2. The redrafting of Sec. 101 creates a more manageable definition of war materials. The former definition, directly incorporated in the legislation, imposed legislative views of strategic materials which, although held by the Act to be equally critical, were extremely uneven in terms of their strategic importance. Moreover, materials of critical importance to a nation's military development tend to change as that development proceeds. The proposed legislation would avoid the necessity of compulsory embargo of goods no longer critical to the identified nations yet would provide for continuous appraisal of the strategic requirements of these nations.

3. The requirement of embargo by other nations in the latter part of Sec. 101 has been completely unenforceable. The proposed revision suggests a line of action which a cooperating nation may reasonably take and which the United States may reasonably seek to enforce. Such language would seem to provide a stronger weapon for enforcement than the language which it replaces. Few third nations could formally establish such an embargo although many would be willing to provide a de facto embargo by other administrative means.

4. Comment, above, on Sec. 101 applies to the similar or identical changes made in Sec. 103.

5. Proposed changes in Sec. 104 seem to us of great importance. The concept of effective cooperation places the emphasis on the product of a nation's action rather than its procedure. The proposed language should result in avoidance of protracted administrative discussions which are expensive and may also be unproductive.

6. Comment on Title II and Title III of the proposals is satisfactorily subsumed in the general comment in paragraph one above.

ORR/CIA
5 January 1959

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12/10/58

PROPOSED AMENDMENTS TO BATTLE ACT

(Bracketed language would be deleted and underlined language added)

Transshipment
AN ACT To provide for the control by the United States and cooperating foreign nations of exports to any nation or combination of nations threatening the security of the United States, including the Union of Soviet Socialist Republics [and all countries under its domination], Communist China, and North Korea, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Mutual Defense Assistance Control Act of 1951."

TITLE I - WAR MATERIALS

SEC. 101. The Congress of the United States, recognizing that in a world threatened by aggression the United States can best preserve and maintain peace by developing maximum national strength and by utilizing all of its resources in cooperation with other free nations, hereby declares it to be the policy of the United States to apply an embargo on the shipment of arms, ammunition, and implements of war, [atomic energy materials, petroleum, transportation materials of strategic value, and items of primary strategic significance used in the production of arms, ammunition, and implements of war] both conventional and nuclear, and equipment, materials, technology, and services which directly enhance war-making potential to any nation or combination of nations which the President determines, for the purposes of this Act, to be threatening the security of the United States, including the Union of Soviet Socialist Republics [and all countries under its domination],

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domination], Communist China, and North Korea, in order to (1) increase the national strength of the United States and of the cooperating nations;

(2) impede the ability of nations which the President determines, for the purposes of this Act, to be threatening the security of the United States, to conduct military operations; and (3) to assist the people of the nations under the domination of foreign aggressors to reestablish their freedom.

It is further declared to be the policy of the United States that no military, economic, or financial assistance shall be supplied to any nation [unless it applies an embargo on] if it authorizes or knowingly permits such shipments to any nation or combination of nations which the President determines, for the purposes of this Act, to be threatening the security of the United States, including the Union of Soviet Socialist Republics [and all countries under its domination] , Communist China, and North Korea.

*No from just
concern over
Sov. shipments*

This Act shall be administered in such a way as to bring about the fullest support for any resolution of the General Assembly of the United Nations, supported by the United States, to prevent the shipment of certain commodities to areas under the control of governments engaged in hostilities in defiance of the United Nations.

SEC. 102. Responsibility for giving effect to the purposes of this Act shall be vested in the [person occupying the senior position authorized by subsection (e) of section 406 of the Mutual Defense Assistance Act of 1949, as amended, or in any person who may hereafter be charged with principal responsibility for the administration of the provisions of the Mutual

Defense

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Defense Assistance Act of 1949. Such person is] Secretary of State or such other officer as the President may designate, hereinafter referred to as the "Administrator."

SEC. 103. (a) The Administrator is hereby authorized and directed to determine [within thirty days after enactment of this Act] after full and complete consideration of the views of the Departments of State, Defense, and Commerce [; the Economic Cooperation Administration;] and any other appropriate agencies, and notwithstanding the provisions of any other law, which items are, for the purposes of this Act, included in any of the following categories: [arms] Arms, ammunition, and implements of war, [atomic energy materials, petroleum, transportation materials of strategic value, and those items of primary strategic significance used in the production of arms, ammunition, and implements of war] both conventional and nuclear, and equipment, materials, technology, and services which directly enhance war-making potential which should be embargoed to effectuate the purposes of this Act: Provided, That such determinations shall be con- X
tinuously adjusted to current conditions on the basis of investigation and consultation, and that all nations receiving United States military, economic, and financial assistance shall be kept informed of such determinations.

(b) All military, economic, or financial assistance to any nation shall, upon the recommendation of the Administrator, be terminated forthwith if such nation after sixty days from the date of a determination under section 103 (a) authorizes or knowingly permits the shipment to any nation or combination of
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nations which the President determines, for the purposes of this Act, to be threatening the security of the United States, including the Union of Soviet Socialist Republics [and all countries under its domination], Communist China, and North Korea, of any item which he has determined under section 103 (a) after a full and complete investigation to be included in any of the following categories: Arms, ammunition, and implements of war, [atomic energy materials, petroleum, transportation materials of strategic value, and items of primary strategic significance used in the production of arms, ammunition, and implements of war] both conventional and nuclear, and equipment, materials, technology, and services which directly enhance war-making potential: Provided, That the President after receiving the advice of the Administrator and after taking into account [the contribution of such country to the mutual security of the free world, the importance of such assistance to the security of the United States, the strategic importance of imports received from countries of the Soviet bloc, and the adequacy of such country's controls over the export to the Soviet bloc of items of strategic importance] all relevant facts relating to such shipments, may direct the continuance of such assistance to a country which authorizes or knowingly permits shipments of items other than items used exclusively as conventional or nuclear arms, ammunition, and implements of war [, and atomic energy materials] when unusual circumstances indicate that the cessation of aid would clearly be detrimental to the security of the United States:

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Provided, further, That the President shall immediately report any determination made pursuant to the first proviso of this subsection with reasons therefor to the [Appropriations and Armed Services Committees of the Senate and of the House of Representatives, the Committee on Foreign Relations of the Senate, and the Committee on Foreign Affairs] Committees on Foreign Relations, Appropriations, and Armed Services of the Senate and the Speaker of the House of Representatives, and the President shall at least once each quarter review all determinations made previously pursuant to the first proviso of this subsection and shall report his conclusions to the foregoing committees of the [House and] Senate and the Speaker of the House of Representatives, which reports shall contain an analysis of the trade with the Soviet bloc of countries for which such determinations have been made.

SEC. 104. Whenever military, economic, or financial assistance has been terminated as provided in sections 103 (b) and 203 of this Act, such assistance can be resumed only upon determination by the President that adequate measures have been taken by the nation concerned to assure [full compliance] effective cooperation with the provisions of this Act.

SEC. 105. For the purpose of this Act the term "assistance" does not include activities carried on for the purpose of facilitating the procurement of materials in which the United States is deficient.

Title

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TITLE II - OTHER MATERIALS

SEC. 201. The Congress of the United States further declares it to be the policy of the United States to regulate the export of commodities other than those specified in title I of this Act to any nation or combination of nations which the President determines, for the purposes of this Act, to be threatening the security of the United States, including the Union of Soviet Socialist Republics [and all countries under its domination], Communist China, and North Korea, in order to strengthen the United States and other cooperating nations of the free world and to oppose and offset by nonmilitary action acts which threaten the security of the United States and the peace of the world.

SEC. 202. The United States shall negotiate with any country receiving military, economic, or financial assistance arrangements for the recipient country to undertake a program for controlling exports of items not subject to embargo under title I of this Act, but which in the judgment of the Administrator should be controlled to any nation or combination of nations which the President determines, for the purposes of this Act, to be threatening the security of the United States, including the Union of Soviet Socialist Republics [and all countries under its domination], Communist China, and North Korea.

SEC. 203. All military, economic, and financial assistance shall be terminated when the President determines that the recipient country (1) is not effectively cooperating with the United States pursuant to this title,

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title, or (2) is failing to furnish to the United States information sufficient for the President to determine that the recipient country is effectively cooperating with the United States.

TITLE III - GENERAL PROVISIONS

SEC. 301. All other nations (those not receiving United States military, economic, or financial assistance) shall be invited by the President to cooperate jointly in a group or groups or on an individual basis in controlling the export of the commodities referred to in title I and title II of this Act to any nation or combination of nations which the President determines, for the purposes of this Act, to be threatening the security of the United States, including the Union of Soviet Socialist Republics [and all countries under its domination], Communist China, and North Korea.

SEC. 302. The Administrator with regard to all titles of this Act shall -

(a) coordinate those activities of the various United States departments and agencies which are concerned with security controls over exports from other countries;

(b) make a continuing study of the administration of export control measures undertaken by foreign governments in accordance with the provisions of this Act, and shall report to the Congress from time to time but not less than once every six months recommending action where appropriate; and

(c) make

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(c) make available technical advice and assistance on export control procedures to any nation desiring such cooperation.

[SEC. 303. The provisions of subsection (a) of section 403, of section 404, and of subsections (c) and (d) of section 406 of the Mutual Defense Assistance Act of 1949 (Public Law 329, 81st Congress), as amended, insofar as they are consistent with this Act, shall be applicable to this Act. Funds made available for the Mutual Defense Assistance Act of 1949, as amended, shall be available for carrying out this Act in such amounts as the President shall direct.]

SEC. 303. (a) This Act shall not be deemed to prohibit furnishing economic and financial assistance to any nation, except the Union of Soviet Socialist Republics, Communist China, and North Korea, whenever the President determines that such assistance is important to the security of the United States: Provided, That, after termination of assistance to any nation as provided in sections 103 (b) and 203 of this Act, assistance shall be resumed to such nation only in accordance with section 104 of this Act. The President shall immediately report any determination made pursuant to this subsection with reasons therefor to the Committees on Foreign Affairs, Appropriations, and Armed Services of the Senate and the Speaker of the House of Representatives.

(b) The Administrator may, notwithstanding the requirements of the first proviso of section 103 (b) of this Act, direct the continuance of assistance

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assistance to a country which authorizes or knowingly permits shipments of items other than items used exclusively as conventional or nuclear arms, ammunition, and implements of war to any nation receiving economic or financial assistance pursuant to section 303 (a) of this Act.

SEC. 304. In every recipient country where local currency is made available for local currency expenses of the United States in connection with assistance furnished by the United States, the local currency administrative and operating expenses incurred in the administration of this Act shall be charged to such local currency funds to the extent available.

[SEC. 305. Subsection (d) of section 117 of the Foreign Assistance Act of 1948 (Public Law 472, Eightieth Congress), as amended, and subsection (a) of section 1302 of the Third Supplemental Appropriation Act, 1951 (Public Law 45, 82d Congress), are repealed.]

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SECTION-BY-SECTION ANALYSIS OF PROPOSED AMENDMENTS TO BATTLE ACT

The long statutory title of the Act is amended in conformity with the general change made throughout the Act characterizing those nations to which shipments are prohibited by the Act as those which threaten the security of the United States, including the Soviet Union, Communist China, and North Korea, which is in substitution for the present reference to "the Union of Soviet Socialist Republics and all countries under its domination".

The first paragraph of section 101 is amended in two ways. First, the categories of items embargoed by the Act are changed to both conventional and nuclear arms, ammunition, and implements of war, as a new category A, and to equipment, materials, technology, and services which directly enhance war-making potential, as a new category B. The phrase "atomic energy materials" is deleted because it is unnecessarily broad, and includes those materials which are used for peaceful purposes. The references to "petroleum" and "transportation materials of strategic value" are deleted because changed conditions have rendered them less strategic. The phrase "items of primary strategic significance used in the production of arms, ammunition, and implements of war" is deleted because of its vagueness and difficulty of interpretation. As a result of these changes, the items embargoed by the Act will be those which are directly used in the waging of war, and not those which have a peaceful as well as a military

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military use. Second, those nations to which shipments are prohibited by the Act are characterized as those which the President determines, for the purposes of the Act, to be threatening the security of the United States, including the Soviet Union, Communist China, and North Korea, which are specifically named. This is in substitution for the present reference to those nations "threatening the security of the United States, including the Union of Soviet Socialist Republics and all countries under its domination". Like the Administrator's determination under section 103 (b) of the items included in the prohibited categories, the President's determination is to be made solely "for the purposes of this Act". In addition to the three nations specifically named, it is contemplated that the Administrator of the Act would recommend a list of the other nations threatening the security of the United States to the President through the National Security Council. The requirement of determining which nations are under the domination of the Soviet Union is deleted because of the difficulties which have been found to be involved in such a determination. Changes conforming to these two major changes in the first paragraph of section 101 are made throughout the rest of the Act, and therefore need not be commented upon hereafter.

The second paragraph of section 101 is amended by omitting the requirement that recipient nations "apply an embargo" on shipments prohibited by the Act, since many recipient nations do not have laws, regulations, or policies which set up embargoes. Instead, recipient nations
are required

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are required not to "authorize" or "knowingly permit" such shipments in order to continue to be eligible for assistance. The new language is designed to cover both active authorization and passive permission of prohibited shipments by recipient nations, and is used consistently throughout the Act as amended.

Section 102 is amended by deleting the obsolete references to the administrator of the Mutual Defense Assistance Act of 1949, as amended, which was specifically repealed by the Mutual Security Act of 1954, and by providing that the Administrator of the Act shall be either the Secretary of State, as is presently the case, or such other officer as the President may designate. The reference to such other officer as the President may designate is included in order to avoid the need to amend the Act in case it is determined that an officer other than the Secretary of State should be the Administrator of the Act.

Section 103 (a) is amended in four ways. First, the obsolete requirement that the Administrator of the Act determine the items included in the prohibited categories "within thirty days after the enactment of this Act" is deleted. Second, the obsolete reference to the Economic Cooperation Administration as one of the agencies to be consulted is deleted. Third, consistent with the language concerning the President's determination of nations to whom shipments are prohibited, the Administrator of the Act is required to determine which items are included in the prohibited categories for the "purposes", rather than "purpose",
of the

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of the Act. Fourth, consistent with the language of section 103 (b), the Administrator of the Act is required to determine which items fall within the prohibited "categories".

Section 103 (b) is amended in five ways. First, consistent with the new language of the second paragraph of section 101, assistance is either terminated, or continued by the President's waiver, under section 103 (b) to any nation which "authorizes" or "knowingly permits" shipments prohibited by the Act. Second, the four complex criteria which the President must apply in making a waiver of the Act are deleted. It has become increasingly difficult to apply these criteria, especially that concerning "the adequacy of such country's controls over the export to the Soviet bloc of items of strategic importance", since some recipients have no authority in their laws to apply such controls. Instead, the President is required to take into account "all relevant facts relating to such shipments". Third, category A items are now defined as those which are used "exclusively" as conventional or nuclear arms, ammunition, and implements of war, thereby restricting the list of category A items and broadening the scope of the President's waiver authority in the case of countries exporting category B items. Fourth, in accordance with Rule 40 of the House, reports of Presidential determinations under section 103 (b) are to be made to the Speaker of the House, in addition to those made to the three appropriate committees of the Senate.

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the Senate. Fifth, the language requiring quarterly reports of reviews of previous determinations is changed to insure that the requirement applies only to determinations under section 103 (b), and not under the new section 303 (a) as well.

Section 104 is amended in two ways. First, consistent with the language of the new section 303 (a), the two sections of the Act under which assistance is terminated are specified for the purpose of clarity. Second, assistance can be resumed only after the President finds that the nation concerned has taken measures to assure "effective cooperation", rather than "full compliance", with the provisions of the Act. The phrase "full compliance" has not proven to be a very workable standard, since it is subject to a variety of interpretations.

Section 303 is deleted since it contains obsolete provisions for financing the administration of the Act out of appropriations for the Mutual Defense Assistance Act of 1949, as amended, which was specifically repealed by the Mutual Security Act of 1954. Section 410 of the Mutual Security Act of 1954, as amended, presently authorizes appropriations for the administration of the Act.

In the place of the present obsolete section 303, a new section 303 is added, which contains the substance of the Kennedy Amendment. Section 303 (a) permits the furnishing of economic and financial, but not military, assistance to any country, other than the Soviet Union, Communist China, and North Korea, which exports category A items, contrary to

section

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section 103 (b), or which exports category B items to the Soviet bloc, upon the President's determination that such assistance is important to the security of the United States. In addition, section 303 (a) permits the furnishing of such assistance to a country which is neither effectively cooperating with, nor furnishing sufficient information to, the United States as required by section 203. A proviso is included, however, which has the effect of prohibiting the use of the authority in section 303 (a) to resume economic or financial assistance to a nation to which assistance has been terminated under either section 103 (b) or section 203, and permits resumption of assistance only upon a determination under section 104 that the nation has taken adequate measures to assure effective cooperation with the Act. A report of each determination under section 303 (a) is to be made to the three appropriate committees of the Senate and the Speaker of the House. Section 303 (a) would permit the use of any amount of mutual security funds, without regard to the present \$30 million ceiling on assistance to any country for which the Act must be waived, and would also permit the use of funds of the Development Loan Fund and the Export-Import Bank, as well as local currencies generated under Public Law 480.

Section 303 (b) provides that the Administrator of the Act, instead of the President, may direct the continuance of assistance to a recipient nation, such as France, if France authorizes or knowingly permits the
shipment

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shipment of category B items to a country, such as Poland, receiving United States assistance pursuant to a determination under section 303 (a). Since the President's determination constitutes the basic finding, the Administrator of the Act may appropriately take the action authorized by section 303 (b) in accordance with, and in implementation of, the President's determination.

Section 305 is deleted since its repeal of the two statutory provisions took effect upon the President's approval of the Act, and therefore need not be continued in effect.

State -- FD, Washington, D. C.

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